IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 18644 of 2003(T)

PETITIONER:

H. ABDUL LATHEEF, ASSISTANT LABOUR OFFICER GRADE.II,
1ST CIRCLE, COLLECTORATE,
KOLLAM, RESIDING AT OTTATHENGIL HOUSE,
H.NO.57, VIKAS NAGAR, KARICODE,
TKMC P.O., KOLLAM.

BY ADV. SRI.B.MOHANLAL,
SMT.MEREENA JOSEPH.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE LABOUR COMMISSIONER, KERALA STATE, HOUSING BOARD BUILDINGS, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. NO. 4544/2003 IN W.P.(C). NO. 18644/2003-T

DISMISSED

05/11/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO: E3-19362/2000 DTD. 07/08/00 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.2: COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATION ISSUED BY THE R.2. THROUGH THE DEPUTY LABOUR OFFICER, KOLLAM.

EXT.P.3: COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE R.2. DTD. 17/03/01.

EXT.P.4: COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER DTD. 12/10/01.

EXT.P.5: COPY OF THE ORDER NO. E3.19362/2000 DTD. 20/0/02 ISSUED BY THE R.2. TO THE PETITIONR.

EXT.P.6: COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE R.1. DTD. 18/06/02.

EXT.P.7: COPY OF THE G.O. NO. 326/03 LABOUR DTD. 22/01/03 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.8: COPY OF THE CIRCULAR NO. 65/94/FIN. DTD. 26/11/94 ISSUED BY THE FINANCE (RULES) DEPARTMENT, GOVERNMENT OF KERALA.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.18644 OF 2003

Dated this the 5th day of November, 2007

JUDGMENT

Petitioner was placed under suspension pending enquiry into the charges, for which, he was issued a show cause notice. An enquiry officer was appointed. Going by the materials on record, the enquiry officer concluded that the charges have not been definitely proved, however, that there was dereliction of duty. The disciplinary authority, though disagreed with the finding of the enquiry officer that the charges were not proved, did not deem it necessary to proceed further by issuing notice to show cause against any tentative decision to disagree with the finding of the enquiry authority or to propose a punishment on the basis of such disagreement. Accordingly, the proceedings were closed by warning the petitioner that any future incident would be viewed seriously. The period of about six months, during which the petitioner was under suspension, was treated as period to be reckoned for all service benefits, including

pension, but not for drawing any emoluments. The petitioner had drawn subsistence allowance during that period.

2. The Government also concluded against the petitioner on the question as to how the period of suspension is to be treated. It is this decision that is under challenge.

3. Rule 56 B of Part I K.S.R. deals with the situation. Sub-rule 3 thereof provides that when the authority competent to order reinstatement is of the opinion that the order of suspension was wholly unjustified, the officer shall, subject to provisions of Sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended. None of the authorities have concluded that the suspension order is wholly unjustified. On the mere fact that the suspension did not culminate in the imposition of punishment following the enquiry, the petitioner is not in a position to contend that he has to be treated as having been exonerated of all blemish and the order of suspension was wholly unjustified.

In the aforesaid circumstances, the competent authority was well within jurisdiction to decide as to how the period of suspension has to be treated. This power, which is still available within Sub-rule (1) of Rule 56 B has been reasonably and logically exercised. Hence, I do not find any jurisdictional error or legal infirmity in the impugned decision. The writ petition fails. The same is accordingly dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

W.P(C).NO.18644 OF 2003

JUDGMENT

5TH NOVEMBER, 2007.

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